July 18, 2007

DECISION AND ORDER
OFFICE OF HEARINGS AND APPEALS

Application for Exception

Case Name: Muddy Creek Oil and Gas, Inc.

Date of Filing: March 28, 2007

Case Number: TEE-0042

On March 28, 2007, Muddy Creek Oil and Gas, Inc. (Muddy Creek) of Pine Ridge, South Dakota, filed an Application for Exception with the Office of Hearings and Appeals (OHA) of the Department of Energy (DOE). Muddy Creek requests that it be relieved of the requirement to prepare and file the Energy Information Administration (EIA) Form EIA-782B, entitled "Resellers/Retailers' Monthly Petroleum Product Sales Report" (Form EIA-782B). As explained below, we have determined that the Application for Exception should be granted in part.

I. Background

The DOE's Energy Information Administration (EIA) is authorized to collect, analyze, and disseminate energy data and other information.[1] The EIA-782B reporting requirement grew out of the shortages of crude oil and petroleum products during the 1970s. In 1979, Congress determined that the lack of reliable information concerning the supply, demand and prices of petroleum products impeded the nation's ability to respond to the oil crisis. It therefore authorized the DOE to collect data on the supply and prices of petroleum products. This information is used to analyze trends within petroleum markets. Summaries of the information and the analyses are reported by EIA in publications such as "Petroleum Marketing Monthly." This information is used by Congress and state governments to project trends and to formulate national and state energy policies.

EIA designates some companies as certainty firms. A company is designated as such because it either (a) sells five percent or more of a particular product sales category in a state in which it does business, or (b) does business in four or more states.[2] All certainty firms are included in the survey sample on a continuing basis because of their impact on the market. Thus, the continuity of the surveys cannot be maintained by replacing a certainty firm with a similar company since

[1] 15 U.S.C. § 772(b); 42 U.S.C. § 7135(b).

[2] A random sample of other firms is also selected. This random sample changes approximately every 24 to 30 months, but a firm may be reselected for a subsequent sample. A firm that has been included in three consecutive random samples will generally not be included in a fourth consecutive sample, but may be included in a later sample.

all companies of this kind are already survey participants. EIA examines the data that these companies submit more closely and considers these data more instructive in gauging market trends than data submitted by smaller firms. In an effort to minimize the burden of preparing the form, EIA permits firms to rely on reasonable estimates.[3]

II. Exception Criteria

OHA has the authority to grant exception relief where the reporting requirement causes a "serious hardship, gross inequity or unfair distribution of burdens."[4] Since all reporting firms are burdened to some extent by reporting requirements, exception relief is appropriate only where a firm can demonstrate that it is adversely affected by the reporting requirement in a way that differs significantly from similar reporting firms.

When considering a request for exception relief, we must weigh the firm's difficulty in complying with the reporting requirement against the nation's need for reliable energy data. Thus, mere inconvenience does not constitute a hardship warranting relief.[5] Neither does the fact that a firm is relatively small or has filed reports for a number of years constitute a hardship warranting relief.[6] If firms of all sizes, both large and small, are not included in the survey, the estimates and projections generated by EIA's statistical sample will be unreliable.[7]

OHA has granted relief from the reporting requirement under various circumstances. For example, we have granted relief where: the firm's financial situation is so precarious that the additional burden of meeting the DOE reporting requirements threatens the firm's continued viability;[8] the firm's only employee capable of preparing the report is ill and the firm cannot afford to hire outside help;[9] extreme or unusual circumstances disrupt a firm's activities;[10] or a combination of factors resulting from unavoidable circumstances makes completing the form impracticable.[11]

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[3] The firm must make a good faith effort to provide reasonably accurate information that is consistent with the accounting records maintained by the firm. The firm must alert the EIA if the estimates are later found to be materially different from the actual data.

[4] 42 U.S.C. § 7194; 10 C.F.R. § 1003.25(b)(2).

[5] *Glenn Wagoner Oil Co*., 16 DOE ¶ 81,024 (1987).

[6] *Mulgrew Oil Co*., 20 DOE ¶ 81,009 (1990).

[7] *Id*.

[8] *Mico Oil Co*., 23 DOE ¶ 81,105 (1994) (firm lost one million dollars over previous three years); *Deaton Oil Co*., 16 DOE 81,206 (1987) (firm in bankruptcy).

[9] *S&S Oil & Propane Co*., 21 DOE ¶ 81,006 (1991) (owner being treated for cancer); *Midstream Fuel Serv*., 24 DOE 81,203 (1994) (three month extension of time to file reports granted when two office employees simultaneously on maternity leave); *Eastern Petroleum Corp*., 14 DOE ¶ 81,011 (1986) (two month extension granted when computer operator broke wrist).

[10] *Little River Village Campground, Inc*., 24 DOE ¶ 81,033 (1994) (five months relief because of flood); *Utilities Bd. of Citronelle-Gas*, 4 DOE ¶ 81,025 (1979) (hurricane); *Meier Oil Serv*. 14 DOE ¶ 81,004 (1986) (three month extension granted where disruptions caused by installation of new computer system left the firm's records inaccessible).

[11] *Ward Oil Co*., 24 DOE ¶ 81,002 (1994) (ten month extension granted where long illness and death of a partner resulted in personnel shortages, financial difficulties and other administrative problems).

III. The Application for Exception

Muddy Creek filed its Application for Exception in March 2007.[12] Based upon a review of the application, we concluded that there was insufficient information to allow us to act favorably on the request. Consequently, we contacted Muddy Creek in order to obtain more information regarding its Application.[13]

Muddy Creek, located in Pine Ridge, South Dakota, is a distributor of petroleum products. In its Application for Exception, Muddy Creek requests that it be relieved of the EIA reporting requirement for at least one year on the grounds that the requirement is burdensome to the company at this time.[14] Muddy Creek states that due to unforeseen circumstances, the company had to sell four of its six locations, reducing the company personnel from approximately 100 employees to about ten employees within one month. Muddy Creek adds that the four locations sold were the company's busiest and, as a result, the company's sales are a fraction of what they used to be.[15] Muddy Creek also states that its accountant, who was responsible for completing Form EIA-782B, abruptly left the company and only one of the ten remaining employees is qualified to assume the accountant's duties.[16] According to Muddy Creek, that individual is trying to learn how to complete Form EIA-782B and take over the company's bookkeeping and reporting functions but is unable to devote her full attention to it because she has been diagnosed with a medical condition for which she must undergo treatment.[17] Muddy Creek states that it is currently unknown how long this individual will be undergoing treatment for her medical condition and the company's financial situation does not allow it to hire another person to take over the accounting and reporting duties.[18]

IV. Analysis

Exception relief is appropriate where a reporting requirement poses a serious hardship, inequity, or unfair distribution of burdens.[19] In order words, relief is appropriate where the reporting requirement adversely affects the firm to a significantly greater degree than it affects other firms. As stated above, in the case of a certainty firm, this showing must be compelling, because of the significance of the data collected.

Upon careful examination of Muddy Creek's Application for Exception, we have determined that temporary exception relief is warranted. The company has experienced an abrupt, significant loss of personnel due to the sale of four of its six locations. In addition, the person responsible for completing Form EIA-782B abruptly left the company, requiring the only remaining qualified employee, who is currently undergoing treatment for a medical condition, to

[12] Email from Patricia A. Pourier, Muddy Creek, to EIA (March 23, 2007; received by OHA March 28, 2007) (Application for Exception).
[13] *See* Memoranda of Telephone Conversation between Patricia A. Pourier, Muddy Creek, and Diane DeMoura, OHA (May 30, 2007).
[14] *Id*.; *see also* Application for Exception.
[15] *Id*.
[16] *Id*.
[17] *Id*.
[18] *Id*., see also Application for Exception.
[19] 42 U.S.C. § 7194; 10 C.F.R. § 1003.25(b)(2).

assume the company's accounting duties. However, considering the public interest in the information obtained from Muddy Creek's EIA-782B form – particularly since it is designated as a certainty firm – we do not believe that the firm should be relieved of the obligation to file form EIA-782B indefinitely. Accordingly, we have determined that a temporary exception through January 2008 should be granted.[20]

It Is Therefore Ordered That:

(1) The Application for Exception filed by Muddy Creek Oil and Gas, Inc., Case No. TEE-0042, be, and hereby is, granted as set forth in paragraph (2) below and denied in all other respects.

(2) Muddy Creek Oil and Gas, Inc., is relieved of the requirement to file form EIA-782B for the months August 2007 through January 2008.

(3) To the extent that the Application is denied, administrative review of this Decision and Order may be sought by any persons aggrieved or adversely affected by the denial of exception relief. Such review shall be commenced by filing a petition for review with the Federal Energy Regulatory Commission within 30 days of the date of this Decision and Order pursuant to 18 C.F.R. Part 385, Subpart J.

Fred L. Brown
Acting Director
Office of Hearings and Appeals

Date: July 18, 2007

[20] *See* Meier Oil Serv., 14 DOE ¶ 81,004 (1986); Ward Oil Co., 24 DOE ¶ 81,002 (1994).